

Anil Kumar Agarwal Vs. State of A.P.

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Court : Andhra Pradesh

Decided On : Feb-11-1992

Reported in : 1992(2)ALT236

Judge : Eswara Prasad, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 482; Andhra Pradesh Excise Act, 1968 - Sections 34; Andhra Pradesh Foreign Liquor and Indian Liquor Rules, 1970 - Rule 9

Appeal No. : Criminal Petition No. 1838 of 1991

Appellant : Anil Kumar Agarwal

Respondent : State of A.P.

Advocate for Def. : Addl. Public Prosecutor

Advocate for Pet/Ap. : V. Pattabhi, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Eswara Prasad, J.

1. The petitioner is the accused No. 3 in CC. No. 35/91 on the file of the Judl. 1st class Magistrate, Bichkunda. He is charged with alleged offences under Section 34(a) of A.P. Excise Act, 1968 read with Rule 9 of A.P. Foreign Liquor and Indian Liquor Rules, 1970 and Import Permit Conditions 5, 6 and 7, along with four others. The petitioner prays for quashing the proceedings in so far as he is concerned on the ground that the allegations against him contained in the charge-sheet, do not reveal or constitute any offence.

2. The petitioner is the owner of the lorry bearing No. ABT 1679 and he is a resident of Hyderabad. His lorry was seized on 6-8-90 by the SI of Police, Excise, Range, Bichkunda, for transporting liquor under a permit issued in favour of accused No. 1, who is licensed to transport with the help of A-5. For alleged violation of Rule 9 of the A.P. Foreign Liquor and Indian Liquor Rules, 1970 ('the Rules' for short) and Import Permit Conditions 5 to 7 (permit conditions', for short), the driver and cleaner of the lorry (A-1 and A-2 respectively) along with A-4 and A-5, were arrested. Later on, the petitioner (accused No. 3) was also arrested on 11-1-1991.

3. Sri Pattabhi, learned counsel for the petitioner submits that the facts alleged in the charge-sheet against the petitioner do not constitute any offence, inasmuch as the petitioner is only the owner of the lorry in question and no specific act is attributed to him to show that he was directly involved in transporting the liquor in violation of the provisions of law and as such, the proceedings should be quashed.

4. The learned Addl. Public Prosecutor contended that the facts stated in the complaint against the petitioner are sufficient to constitute the offence alleged against him and the facts stated in the charge-sheet will be proved at the time of trial.

5. Sri Pattabhi, relied on *Municipal Corporation of Delhi v. Ram Kishan Rohtagi and Ors.*, : 1983 CriLJ159 and contended that the petitioner is only the owner of the lorry and he is not involved in the offence alleged and at best, the driver and cleaner of the lorry alone can be made liable. In the said decision the Supreme Court was dealing with the liability of the Directors of a manufacturing company. Construing the words 'as such' found in the complaint, it was held that the

complaint did not attribute any criminal responsibility to the Directors, except that they were incharge and responsible for the conduct of the business. In the present case, in the charge-sheet it is stated, 'thus, the investigation reveals that A-1 to A-5 are involved in transportation of 550 cartons of whisky and vodka from Indor via Madnoor to Hyderabad instead of Udaipur to the premises of M/s. Saptagiri Enterprises, Hyderabad, via Nagpur, Kamareddy in lorry No. ABT 1679 and not in lorry No. CPM 7658 unauthorisedly against the Import Permit Rule 9 and Liquor Rules, 1970 and conditions 5, 6 and 7 of Import Permit, as such all the abovesaid accused persons have contravened the provisions of excise Rules and thereby they are liable for punishment for the offence under Section 34(a) of A.P. Excise Act, 1968 read with Rule 9 of APFL & IL Rules, 1970 and Import Permit conditions, 5, 6 and 7.'

6. Section 34(a) of the Act makes any one who imports, exports, transports, manufactures, collects or possesses any intoxicant, in contravention of the Act or of any rule, notification or order made, issued or passed thereunder or of any licence or permit granted or issued under the Act, punishable. According to the charge-sheet, the petitioner, along with A-1, A-2, A-4 and A-5 was involved in transportation of liquor and violated Rule 9 and permit conditions. It is for the prosecution to substantiate the allegations in the charge-sheet with evidence.

7. The learned counsel next referred to Hareram Satpathy v. Tikaram Agarwal and Ors., : 1978 CriLJ1687 and argued that a Magistrate must satisfy himself whether there was prima facie grounds for issuing process against the accused, not mentioned in the police report, after taking cognizance of the offence. It was held in that case that the High Court cannot launch on a detailed and meticulous examination of the case on merits and set aside the order of Magistrate directing issue of process against certain persons. It was also held that the Magistrate was restricted to find out whether there was prima fade case or not, for proceeding against the accused and cannot enter into a detailed discussion of the merits or demerits of the case and the scope of revisional jurisdiction was very limited. I fail to see how this decision will help the petitioner.

8. The learned Counsel next referred to State of West Bengal v. Swapan Kumar Guha, (1988) 1 SCC 561 and contended that High Court can quash FIR if there are no allegations constituting an offence. As noticed earlier, there are allegations in the charge-sheet which will constitute an offence.

In Nagawwa v. Veeranna, : 1976 CriLJ1533 it was observed as follows:-

'It is true that in coming to a decision as to whether a process should be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a prima facie case against him. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the Magistrate has exercised his discretion it is not for the High Court or even the Supreme Court to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused.'

9. In the case on hand, the charge-sheet undoubtedly contains averments that A-1 to A-5 are involved in transportation of the liquor in violation of the provisions of the Act and the Rules, which are punishable. It will not be proper for this court to interdict the proceedings at this stage. It is for the prosecution to substantiate the charges by adducing proper evidence at the time of trial. There are no grounds to interfere with the proceedings in the court below. The petition is accordingly dismissed.